

Undersigned counsel wishes to thank Examiner Wong for the courtesies extended at a recent interview conducted at the U.S. Patent and Trademark Office. At that interview, the rejection of the claims under 35 U.S.C. §102(b)/103 was discussed. As set forth in the Examiner's Interview Summary, it was acknowledged that the membrane shown in the prior art references is not a permeable detection blocking membrane as is set forth in the claims. The Examiner has accordingly withdrawn the prior art rejection. This determination is gratefully acknowledged.

In the present Office Action, claims 16-30 and 38-45 stand rejected under 35 U.S.C. §112 first paragraph as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to make and/or use the invention. Further, claims are rejected under 35 U.S.C. §251 as being improperly broadened in a reissue application. Claims 16-30 and 38-45 have been cancelled and new claims 46-50 are presented herewith.

Claim 46 is substantially similar to claim 15, which issued in the parent patent and which the Examiner has again indicated as being allowable. Claim 15 is directed to a chemotaxis assay procedure which measures the migration of cells across a radiation opaque membrane and which is non-destructive of the cells. Claim 46 recites a cell migration assay which similarly measures the migration of cells across a radiation opaque membrane and is non-destructive of the cells. The preamble recitation of cell migration of claim 46, taken together with the remainder of the claim, is submitted as being supported by the specification in accordance with 35 U.S.C. §112, first paragraph. Further, such a claim is not improperly broadened under 35 U.S.C. §251.

The present invention as set forth in claim 46 is directed to an assay which measures the migration of cells across a radiation opaque membrane where the procedure is non-destructive of the cells. One technique for causing migration of the cells is to provide a chemoattractant on one side of the radiation opaque membrane. Use of a chemoattractant to allow cells to pass through a filter or the like is well known in the art. However, a chemoattractant is only one preferred example of a technique for effecting cell motility. Other cell migration techniques are well known in the art.

The specification of the present invention supports the broad aspect of cell motility. As set forth in the specification at column 5, line 30 through column 6, line 46, the invention provides for the migration of labeled cells across the membrane. The labeled cells, which have crossed the membrane, can be measured by electromagnetic radiation which is used to stimulate the labeled cells. Preferably, the radiation opaque membrane is not substantially transmissive to the wavelengths of the electromagnetic radiation so that there is no detection of the cells which have not migrated across the membrane. While blocking efficiency of the membrane is a significant aspect of the present invention, how the labeled cells are attracted or caused to pass through the membrane is not set forth as a particular novel aspect of the invention.

The specification notes that a significant advantage of the present invention is that it avoids the tedious steps of removing the filter or scraping the non-migrating cells from the filter. Further, the assay of the present invention is non-destructive of the cell sample and, thus, permits repeated measurements of the same test sample at different time intervals. Neither of these particular advantages requires a chemoattractant.

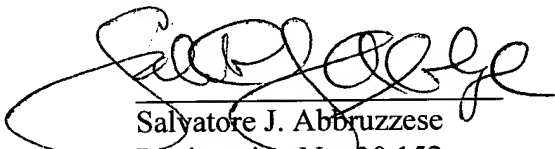
Therefore, taking into consideration the broad description in the specification as particularly set forth in columns 5 through 6 thereof, one can practice the desired novel aspects

of the present invention with an attractant other than a chemoattractant. Further, this would not involve extensive experimentation to one skilled in the art. Therefore, it is respectfully submitted that the claims are supported by the specification as set forth in 35 U.S.C. §112, first paragraph. Moreover, as the specification particularly points out the novel aspects of the present invention, including a blocking membrane which is non-destructive of the cell sample, claim 46 is not improperly broadened as set forth in 35 U.S.C. §251.

It is, therefore, respectfully submitted that claim 46 and claims 47-50 which depend therefrom define patentable subject matter, and the application, including claims 1-15 and claims 46-50 is believed to be in condition for allowance. Favorable action thereon is respectfully solicited.

Should the Examiner wish to discuss this application in further detail, the Examiner is invited to contact Applicants' undersigned attorney by telephone at (973) 331-1700.

Respectfully submitted,


Salvatore J. Abbruzzese
Registration No. 30,152
Attorney for Applicants

HOFFMANN & BARON, LLP
6900 Jericho Turnpike
Syosset, NY 11791
(973) 331-1700